

HONORABLE DAVID G. ESTUDILLO

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

NATIONAL PRODUCTS INC.,

Plaintiff,

v.

INNOVATIVE INTELLIGENT  
PRODUCTS, LLC D/B/A GPS LOCKBOX,

Defendant.

INNOVATIVE INTELLIGENT  
PRODUCTS, LLC D/B/A GPS LOCKBOX,

Counterclaim Plaintiff,

v.

NATIONAL PRODUCTS INC.,

Counterclaim Defendant.

Case No. 2:20-cv-00428-DGE

**NATIONAL PRODUCTS INC.'S  
MOTION FOR ATTORNEYS' FEES**

**Note On Motion Calendar:**  
**October 20, 2023**

**REDACTED VERSION**

**JURY TRIAL DEMANDED**

**TABLE OF CONTENTS**

	<b>Page</b>
I. INTRODUCTION & BACKGROUND .....	1
II. NPI'S ATTORNEYS' FEES REQUEST IS REASONABLE .....	2
A. The Number of Hours Expended is Reasonable .....	2
B. Counsel's Hourly Rates are Reasonable .....	4
III. CONCLUSION.....	5

## TABLE OF AUTHORITIES

## Page(s)

## CASES

<i>Burdette v. Steadfast Commons II, LLC</i> , No. 11-980-RSM, 2012 WL 12883114 (W.D. Wash. Nov. 19, 2012).....	2
<i>City of Burlington v. Dague</i> , 505 U.S. 557 (1992).....	2
<i>Clark v. Golden Specialty, Inc.</i> , No. C14-1412 TSZ, 2017 WL 516163 (W.D. Wash. Feb. 8, 2017).....	4
<i>Eat Right Foods, Ltd v. Whole Foods Mkt. Servs., Inc.</i> , No. C13-2174RSM, 2015 WL 11233198 (W.D. Wash. Feb. 18, 2015).....	2
<i>Experience Hendrix, L.L.C. v. James Marshall Hendrix Found.</i> , No. C03-3462Z, 2005 WL 2922179 (W.D. Wash. Nov. 4, 2005).....	4
<i>GT Dev. Corp. v. Temco Metal Prods. Co.</i> , No. C04-0451Z, 2005 WL 2138546 (W.D. Wash. Aug. 31, 2005).....	4
<i>Hawkins v. Ace Am. Ins. Co.</i> , No. 21-cv-01459-RAJ, 2023 WL 2584909 (W.D. Wash. Mar. 21, 2023) .....	4
<i>Jung v. Liberty Mut. Fire Ins.</i> , No. C22-5127RSL, 2023 WL 2266088 (W.D. Wash. Feb. 28, 2023).....	2
<i>McGrath v. Cnty. of Nev.</i> , 67 F.3d 248 (9th Cir. 1995) .....	2
<i>Meppelink v. Wilmington Sav. Fund Soc’y FSB</i> , No. C19-5655RJB, 2020 WL 3574264 (W.D. Wash. July 1, 2020) .....	2
<i>Red Lion Hotels Franchising, Inc. v. Century-Omaha Land, LLC.</i> , No. 18-CV-0131-TOR, 2019 WL 691402 (E.D. Wash. Feb. 19, 2019).....	4

1 **I. INTRODUCTION & BACKGROUND**

2 Per the Court's Order on Discovery Motions, Dkt. 189 at 7, NPI seeks \$37,577.70 in fees  
3 incurred with bringing its Motion for Discovery Sanctions and to Compel Discovery, Dkt. 130.

4 NPI's requested fees are reasonable. NPI's Motion was far more than a routine motion to  
5 compel as NPI was forced to address a host of problematic behavior by GPS. That included  
6 GPS's failure to provide timely responses to NPI's requests for production and interrogatories,  
7 Dkt. 130 at 5–7, GPS's refusal to provide proper responses when notified of its tardiness, *id.* at  
8 6–7, and GPS's continued withholding of relevant discovery even after providing deficient  
9 responses, *id.* at 7; Dkt. 144 at 4–6.

10 NPI also had to detail its extensive but unsuccessful efforts to confer with counsel for  
11 GPS, Dkt. 130 at 2–3, 8, which was a factor in the Court's award of attorneys' fees to NPI. Dkt.  
12 189 at 7 ("The Court finds Defendant failed to confer in good faith with respect to [NPI's]  
13 motion."). The Court specifically referenced counsel's declaration detailing those efforts in its  
14 Order. *Id.* at 6 (citing Dkt. 131 [Tamimi Declaration in support of NPI's Motion] at 6–13).

15 And GPS's Opposition made NPI's reply far from straightforward. Rather than simply  
16 addressing the discovery deficiencies identified by NPI, GPS spent many pages defending its  
17 inequitable conduct claim, Dkt. 136 at 2–4, 9–13, including by submitting four new witness  
18 declarations, Dkts. 137–139, 141, and argued that NPI—rather than GPS—failed to confer in  
19 good faith, *id.* at 1, 4–6.

20 The result was ■■■ hours of legal work for two attorneys and ■■■ hours of work for one  
21 paralegal, who was required to perform fact and legal cite checking for myriad issues. Given the  
22 circumstances, the time NPI's counsel spent on the Motion is reasonable, particularly  
23 considering that NPI was attempting to obtain information necessary to rebut GPS's antitrust  
24 allegations—counterclaims for which GPS seeks \$20 million dollars. For the same reasons,  
25 NPI's \$37,577.70 fee request is reasonable. NPI was billed and has paid that amount. The Court  
26 should grant NPI's Motion for Attorneys' Fees in full.

## II. NPI'S ATTORNEYS' FEES REQUEST IS REASONABLE

Courts in this Circuit evaluate the reasonableness of attorneys' fees using the "lodestar approach." *Burdette v. Steadfast Commons II, LLC*, No. 11-980-RSM, 2012 WL 12883114, at \*1 (W.D. Wash. Nov. 19, 2012). The "lodestar" is calculated "by multiplying the number of hours . . . the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *McGrath v. Cnty. of Nev.*, 67 F.3d 248, 252 (9th Cir. 1995). "The reasonable hourly rate corresponds to the prevailing market rate in the relevant community, considering the experience, skill, and reputation of the attorney in question." *Eat Right Foods, Ltd v. Whole Foods Mkt. Servs., Inc.*, No. C13-2174RSM, 2015 WL 11233198, at \*3 (W.D. Wash. Feb. 18, 2015) (citing *Chalmers v. City of L.A.*, 796 F.2d 1205, 1210 (1986), *amended on other grounds*, 808 F.2d 1373 (9th Cir. 1987)). There is a strong presumption that fees calculated in this way are reasonable. *See City of Burlington v. Dague*, 505 U.S. 557, 562 (1992).

### A. The Number of Hours Expended is Reasonable

The first step in the lodestar calculation is to determine whether the total hours spent were reasonable. In the Ninth Circuit, the "number of hours to be compensated is calculated by considering whether, in light of the circumstances, the time could reasonably have been billed to a private client." *Meppelink v. Wilmington Sav. Fund Soc'y FSB*, No. C19-5655RJB, 2020 WL 3574264, at \*7 (W.D. Wash. July 1, 2020) (internal citation omitted). "The party requesting fees bears the burden of documenting the hours expended and providing evidence in support of those hours worked." *Jung v. Liberty Mut. Fire Ins.*, No. C22-5127RSL, 2023 WL 2266088, at \*2 (W.D. Wash. Feb. 28, 2023) (citing *Gates v. Deukmejian*, 987 F.2d 1392, 1397 (9th Cir. 1992)).

Counsel for NPI spent [REDACTED] hours drafting NPI's Motion and responding to GPS's Opposition. Those hours are documented in the accompanying Declaration of David K. Tellekson. Tellekson Decl. Ex. D (Bill). NPI is seeking to recover on those fees directly related to work performed for the Motion. Tellekson Decl. ¶ 13. NPI's counsel has reviewed its time entries, removed any entries related to work unrelated to NPI's Motion to Compel and for Discovery Sanctions, including time entries for drafting correspondence with GPS related to its

1 discovery responses, attempts to confer, and for reviewing GPS's responses. *Id.* In other words,  
 2 only time entries directly related to drafting, reviewing, and editing the Motion, reply, and  
 3 supporting declaration have been included, as well as time spent analyzing GPS's response to the  
 4 Motion. Further, any time entries that included work that was not directly related to drafting the  
 5 Motion or that was not ultimately used in responding to GPS's Opposition have been reduced to  
 6 accurately reflect time only spent on the Motion. *Id.*

7 The time NPI's counsel spent with respect to its Motion to Compel and for Discovery  
 8 Sanctions is reasonable given the nature of this case and the information sought in that Motion,  
 9 particularly as it relates to GPS's claim for damages. GPS seeks \$20 million from NPI for  
 10 alleged antitrust violations predicated on its inequitable conduct claims. Tellekson Decl. ¶ 14.  
 11 Discovery undermining GPS's antitrust and inequitable conduct claims was the focus of much of  
 12 the discovery sought in NPI's Motion, and so it was both reasonable and necessary for NPI and  
 13 its counsel to devote ample time and attention to addressing GPS's discovery deficiencies.  
 14 Moreover, in addition to explaining the relevance of the discovery sought and how GPS's  
 15 responses were deficient, NPI had to brief sanctions for GPS's failure to timely provide those  
 16 responses as well as for GPS's failure to meet and confer on NPI's Motion. And because GPS's  
 17 Opposition did not simply address its discovery misconduct, but instead argued (incorrectly) that  
 18 NPI itself failed to meet and confer and that its affirmative claims were well-supported, NPI was  
 19 forced to spend additional time and resources analyzing the Opposition, and responding to it,  
 20 than normally would have been required.

21 Given all that, the request for a fee award for ■■■ hours of attorney time—to research  
 22 and brief two motions—is modest. Likewise, ■■■ hours of paralegal time to perform legal and  
 23 fact cite checking on two briefs and a factually intensive declaration detailing NPI's months-long  
 24 efforts to engage with GPS,<sup>1</sup> and gathering exhibits and emails reflecting those efforts, is  
 25 reasonable.

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26  
 27 <sup>1</sup> There are over two-hundred factual citations in NPI's Motion, the supporting declaration, and  
 28 NPI's reply brief combined.

**B. Counsel's Hourly Rates are Reasonable**

“The reasonable hourly rate is usually determined by reference to the rates charged by lawyers in the same legal community with comparable skills and reputations.” *GT Dev. Corp. v. Temco Metal Prods. Co.*, No. C04-0451Z, 2005 WL 2138546, at \*1 (W.D. Wash. Aug. 31, 2005). “Also relevant are the ‘time limitations imposed on the litigation, the amount of the potential recovery, the attorney’s reputation, and the undesirability of the case.’” *Red Lion Hotels Franchising, Inc. v. Century-Omaha Land, LLC.*, No. 18-CV-0131-TOR, 2019 WL 691402, at \*4 (E.D. Wash. Feb. 19, 2019). “Where the attorneys in question have an established rate for billing clients, that rate will likely be a reasonable rate.” *Experience Hendrix, L.L.C. v. James Marshall Hendrix Found.*, No. C03-3462Z, 2005 WL 2922179, at \*4 (W.D. Wash. Nov. 4, 2005), *aff’d sub nom.*, 240 F. App’x 739 (9th Cir. 2007). “Affidavits of the attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases, particularly those setting a rate for an attorney, are satisfactory evidence of the prevailing market rate.” *Hawkins v. Ace Am. Ins. Co.*, No. 21-cv-01459-RAJ, 2023 WL 2584909, at \*2 (W.D. Wash. Mar. 21, 2023); *Clark v. Golden Specialty, Inc.*, No. C14-1412 TSZ, 2017 WL 516163, at \*2 (W.D. Wash. Feb. 8, 2017) (“Rate determinations in other similar cases and affidavits of the plaintiff’s attorneys and other attorneys regarding prevailing fees in the community ‘are satisfactory evidence of the prevailing market rate.’”).

Fenwick’s rates mirror prevailing rates for similar work. Tellekson Decl. ¶¶ 4–9. Again, the potential exposure on GPS’s antitrust claim is tens of millions of dollars. The discovery sought by NPI’s discovery requests and in its Motion have confirmed that there is no basis for GPS’s claims. In its Motion, NPI was represented by two Fenwick attorneys who have many years of experience. *See* Tellekson Decl. ¶¶ 2–3 (outlining qualifications of counsel). And the hourly rates that Fenwick is seeking are the same or below that Fenwick charges its clients and are established billing rates for NPI in particular. *Experience Hendrix*, 2005 WL 2922179, at \*4; Tellekson Decl. ¶ 3.

In sum, the skill and experience of NPI’s attorneys justifies their hourly rates.

1 **III. CONCLUSION**

2 For these reasons, NPI respectfully requests that the Court grant it Motion for Attorneys'  
3 Fees in full.

4  
5 Dated: October 5, 2023

Respectfully submitted,

6 FENWICK & WEST LLP

7  
8 By: s/David K. Tellekson

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16 NATIONAL PRODUCTS INC.



**CERTIFICATE OF SERVICE**

I, Sharie L. Parks, hereby certify that on October 5, 2023, I caused the foregoing  
**NATIONAL PRODUCTS INC.'S MOTION FOR ATTORNEYS' FEES** to be served on the  
 following parties as indicated below:

<b>Joshua King (WSBA No. 22244)</b> King IP Law PO Box 50205 Bellevue, WA 98015 <i>Attorney for Defendant/Counterclaim Plaintiff</i> INNOVATIVE INTELLIGENT PRODUCTS, LLC D/B/A GPS LOCKBOX	<input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input checked="" type="checkbox"/> <b>By Electronic CM/ECF</b> <input type="checkbox"/> By Overnight Express Mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Email jking@king-iplaw.com
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Dated: October 5, 2023

By: s/Sharie L. Parks  
 For David K. Tellekson, WSBA No. 33523  
 FENWICK & WEST LLP

**LCR 7(e) WORD-COUNT CERTIFICATION**

As required by Western District of Washington Local Civil Rule 7(e), I certify that this motion contains 1480 words.

Dated: October 5, 2023

FENWICK & WEST LLP

By: s/David K. Tellekson  
David K. Tellekson, WSBA No. 33523